

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

October 31, 2005

In Reply Refer To:
Tennessee Gas Pipeline Company
Docket No. RP96-312-153

Tennessee Gas Pipeline Company
1001 Louisiana Street
Houston, Texas 77002

Attention: Jay V. Allen, Senior Counsel

Reference: Compliance Filing

Dear Mr. Allen:

1. On October 24, 2005, Tennessee Gas Pipeline Company (Tennessee) filed various explanations about a negotiated rate arrangement, including an FT-A Service Agreement and a Negotiated Rate Agreement, between Coral Energy Resources, L.P. (Coral) and Tennessee in compliance with an order issued by the Commission on October 14, 2005 (the October 14 Order),¹ pursuant to the filing Tennessee made on September 16, 2005 (the September 16 filing). The Commission accepts Tennessee's explanations, and grants the necessary waivers of the Commission's regulations to permit the subject arrangement to become effective October 15, 2005, as requested.

2. The subject negotiated rate agreement concerns capacity that Orchard Gas Corporation (Orchard) permanently released to Coral on September 1, 2005. Orchard received service under Tennessee's Rate Schedule NET-284 until 2002, when it converted to regular Part 284 service under Tennessee's Rate Schedule FT-A.² The maximum FT-A rate was lower than the maximum NET-284 rate, since the latter rate was an incremental rate reflecting the costs of facilities Tennessee constructed in order to provide the NET service. As part of the conversion, Orchard entered into a negotiated rate agreement with Tennessee requiring it to pay a reservation rate that included a

¹ 113 FERC ¶ 61,036 (2005).

² *Tennessee Gas Pipeline Company*, 100 FERC ¶ 61,151 (2002) (the August 2, 2002 Order).

surcharge in addition to the maximum FT-A reservation rate through July 31, 2007. In addition, if Orchard failed to transport certain minimum volumes during a period ending January 31, 2006, it would be required to pay an additional amount in excess of the maximum FT-A usage charge.

3. In its September 16 filing, Tennessee stated that it was submitting (1) an FT-A Gas Transportation Agreement with Coral and (2) a negotiated rate letter agreement with Coral dated September 16, 2005 to reflect the permanent assignment of Orchard's FT-A Transportation service and negotiated rate agreement to Coral to be effective October 15, 2005. The negotiated rate letter agreement stated that "Orchard successfully posted its release request in accordance with applicable procedures as provided in Tennessee's FERC Gas Tariff." The letter agreement further stated that Orchard "requested to permanently assign all rights and obligations" under its service agreement to Coral and "Tennessee is agreeable to such permanent assignment." The negotiated rate letter agreement then provided that Coral would pay a negotiated rate that requires it to pay the same amounts in excess of the maximum FT-A reservation and usage charges as Orchard would have been required to pay over the same periods. Tennessee requested that the Commission grant all necessary waivers of its regulations in order to accept the negotiated rate agreement effective October 15, 2005, without specifying any particular regulation that required waiver.

4. In the October 14 Order, the Commission accepted and suspended Tennessee's filing to be effective October 15, 2005, subject to conditions. The Commission pointed out that section 284.8(h)(1) of the Commission's regulations provided that the rate for a capacity release "may not exceed the maximum rate." The Commission further noted that section 11.1(d) of the General Terms and Conditions of Tennessee's tariff contained the same requirement. The Commission concluded that it was not clear from the information contained in the September 16 filing whether waiver of section 284.8(h)(1) would be necessary in order to accept the negotiated rate letter agreement between Tennessee and Coral. The Commission accordingly directed Tennessee to provide a description of the capacity release transaction between Orchard and Coral, including whether the release was prearranged. Tennessee was also directed to submit (1) the full text of any postings of Orchard's capacity release, including any requests for bids and (2) all terms and conditions agreed to by Coral in order to obtain the release. The Commission directed Tennessee to state whether it believed waiver of section 284.8(h)(1) was necessary and, if so, to state the reasons why such a waiver would be justified.³

³ Additionally, the Commission directed Tennessee to explain the relevance of Amendment A to Tennessee's September 16 filing, how that part of the negotiated rate formula worked, and the significance, if any, of Tennessee's reference to Iroquois' RTS-1 Rate Schedule to the agreement between Tennessee and Coral. In the instant filing, Tennessee has adequately explained these aspects of its filing.

5. Tennessee filed to comply with the October 14 Order on October 24, 2005. The compliance filing shows that Orchard and Coral entered into a prearranged capacity release deal under which Coral agreed to execute with Tennessee a negotiated rate agreement with the same commercial terms as Orchard's negotiated rate agreement. Orchard agreed to pay Coral \$12.1 million adjusted to reflect any demand charges paid by Orchard between October 1 and the effective date of the release. On August 26, 2005, Tennessee posted the prearranged deal competing bids in a reverse auction process with the bids being evaluated on the basis of which shipper required the smallest payment from Orchard in order to agree to assume the Orchard-Tennessee negotiated rate agreement. No bids were submitted in response to the posting, and accordingly Tennessee awarded the release to Coral on September 1, 2005, with the release to take effect on October 15, 2005.⁴

6. In its compliance filing, Tennessee states that section 284.8(e) restricts bids on capacity release transactions to being no higher than the maximum rate.⁵ Tennessee further states, "The negotiated rate agreement associated with the capacity being released by Orchard is above Tennessee's maximum rate. It is for that reason Tennessee requested in its September 16 Filing, and reiterates such request here, that the Commission grant waiver of its regulations to approve the Arrangement."⁶

7. On October 26, 2005, Coral filed a motion to intervene out of time requesting expedited action and urging the Commission to approve the Negotiated Rate Agreement. Coral also states that the lump sum payment it will receive from Orchard is greater than payments in excess of the FT-A maximum rate that Coral will make over the term of the negotiated rate agreement; however, Coral provides no calculations to show that that will be the case. In the circumstances of this case, where the Commission's September 16 Order raised concerns about a capacity release in which Coral was the prearranged shipper, the Commission will permit the late intervention.

8. When, as here, a pipeline believes waiver of the Commission's capacity release regulations may be necessary in order to permit a particular capacity release posting, the pipeline should request waiver of the relevant regulations before the release is posted for

⁴ Tennessee's September 16, 2005 filing at 1 n.1.

⁵ As Tennessee points out, section 284.8(h), cited by the October 14 Order, applies to releases which are not required to be posted. The Commission agrees that, since the instant release was posted for bidding, section 284.8(e) is the applicable regulation.

⁶ October 24 compliance filing at 3.

bidding.⁷ Moreover, in any request for waiver of the Commission's regulations, a pipeline should identify the specific section of the regulations for which it seeks the waiver. Here, Tennessee did not comply with either of these requirements when it made its original September 16 filing. However, because the Commission believes a waiver of section 284.8(e) is appropriate in the particular circumstances of the instant permanent release, and in order to avoid penalizing the parties to this release transaction, the Commission grants the requested waiver.

9. The purpose of Orchard's 2002 negotiated rate agreement with Tennessee was to permit it to convert from Rate Schedule NET-284 to the higher quality Part 284 service provided under Rate Schedule FT-A, while still compensating Tennessee for the NET expansion costs. Now, Orchard has determined it no longer needs service under Rate Schedule FT-A, and wishes to permanently release the contract. Given the history of the subject capacity and the unique circumstances surrounding the evolution of the rate paid by Orchard, we find it reasonable for a permanent release of Orchard's capacity to be posted for bids up to the negotiated rate that Orchard was paying. That is what Tennessee's August 26 capacity release posting did, when it established a reverse auction process with bids being evaluated on the basis of which shipper required the smallest payment from Orchard in order to agree to assume the Orchard-Tennessee negotiated rate agreement. Accordingly, the Commission grants waiver of section 284.8(e), and approves the negotiated rate agreement between Tennessee and Coral.

By direction of the Commission

Magalie R. Salas,
Secretary.

cc: All Parties
Public File

Marguerite N. Wong-Chapman, General Counsel
Tennessee Gas Pipeline Company
1001 Louisiana Street
Houston, Texas 77002

⁷ See *Northwest Pipeline Corp.*, 109 FERC ¶ 61,044 (2004), where the pipeline did request the necessary waivers before the release was posted.

Byron S. Wright, Vice President
Tennessee Gas Pipeline Company
1001 Louisiana Street
Houston, Texas 77002

H. Milton Palmer, Jr., Director
Rates and Regulatory Affairs
Tennessee Gas Pipeline Company
1001 Louisiana Street
Houston, Texas 77002